

Federal Court



Cour fédérale

Date: 20250210

Docket: IMM-11411-23

Citation: 2025 FC 255

Ottawa, Ontario, February 10, 2025

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

**KASRA DAMAVANDIAN (BY HIS
LITIGATION GUARDIAN SOLMAZ
KOMIJANI)**

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Kasra Damavandian [Applicant] is a 12-year-old citizen of Iran, seeking judicial review of an August 29, 2023 decision [Decision] of the Refugee Appeal Division [RAD]. The RAD upheld a decision of the Refugee Protection Division [RPD] which determined that the Applicant is not a Convention refugee nor person in need of protection, under sections 96 and 97(1) of the

Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]. The determinative issue for the RAD was the objective basis of the Applicant's claim. The Applicant's mother acted as the Applicant's designated representative [DR].

[2] The application for judicial review is dismissed.

II. Background

[3] The refugee claims of the Applicant and the DR were heard together. The DR testified on the Applicant's behalf.

[4] The RPD denied the Applicant's claim but granted the DR's claim. The RPD found the DR faced a well-founded fear of persecution, including risk of further arrest and detention, on return to Iran. The RPD accepted the DR was arrested several times for violating Iran's laws on women's attire, and that she identifies "as a non-Muslim". The RPD made no credibility findings against the DR. The DR claimed the Applicant shared her views and that he was stressed about his family's situation in Iran.

[5] The RPD found that the Applicant did not have a subjective fear of persecution in Iran and lacked an objective basis for risk of persecution. The RPD's finding of insufficient objective risk relied on the premise that the Iranian authorities would not learn of the Applicant's religious choice in the future. Since Iranian authorities do not presently know the Applicant's religious choice, the RPD reasoned he would be seen as a Shia Muslim.

[6] The Applicant appealed the RPD's decision to the RAD.

III. Decision

[7] On August 29, 2023, the RAD dismissed the appeal.

[8] The Applicant sought to submit new evidence, including affidavits from his maternal grandparents. The RAD admitted the documents finding they met the requirements of section 110(4) of *IRPA* as well as the factors on credibility, newness, and relevance as established by *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 and *Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96. Notwithstanding their admittance, the RAD concluded the documents had little probative value relative to the determinative issue in the Applicant's claim.

[9] The RAD denied the Applicant's request for an oral hearing because the new evidence did not raise a serious issue of the Applicant's credibility. Credibility was not a determinative issue to the Applicant's claim.

[10] The RAD found that the RPD correctly determined the Applicant did not have a well-founded fear of persecution in Iran. The mere fact that the DR's claim was objectively well-founded does not mean the Applicant's claim also is.

[11] The RAD determined there is no merit to the Applicant's assertion that the RPD did not consider the risk faced by the Applicant on the basis of the DR's rejection of Islamic norms. The RAD noted the DR was unable to identify any specific risks for the Applicant in Iran. The

Applicant did not contest the RPD's findings that Iranian authorities would perceive him as a Shia Muslim and not an apostate. There was insufficient evidence showing the Applicant would be targeted based on the DR's past arrests, or his own views on the regime.

[12] The RAD acknowledged that the Iranian authorities do persecute or harass relatives of high-profile dissidents. However, the RAD found there is insufficient evidence indicating the DR would be of interest to the regime such that they would persecute or harass the Applicant. The objective evidence establishes that the regime primarily targets women and girls. Due to the Applicant's young age and absence of political activism, the RAD found insufficient evidence to suggest that the Applicant would be regarded as a dissident or become a target of the regime. On the Applicant's return to Iran, he would live under the protection of his father. The RAD found no evidence to suggest any substantial change to this arrangement.

[13] The RAD found that the RPD erred in determining the Applicant failed to establish a subjective fear of persecution in Iran. However, the RAD concluded this was not fatal to the overall decision since the objective basis for the claim was not established. Furthermore, the RAD found no requirement to address humanitarian and compassionate considerations, nor the best interests of the child, when assessing the substantive aspects of a refugee claim

[14] The RAD concluded that the RPD was correct in finding the Applicant had not established he faced a serious possibility of persecution or, on a balance of probabilities, a danger of torture, a risk to his life, or a risk of cruel and unusual treatment or punishment. The

RAD dismissed the appeal and confirmed the RPD's decision that the Applicant is neither a Convention refugee nor a person in need of protection.

IV. Issues and Standard of Review

[15] The only issue for determination is whether it was reasonable for the RAD to conclude the Applicant's risk of persecution lacked an objective basis.

[16] The parties agree that the Decision is reviewable on the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). I agree. None of the situations that would rebut the presumption that all administrative decisions are reviewable on a standard of reasonableness are present in this case (*Vavilov* at paras 16-17).

V. Analysis

A. *Applicant's Position*

[17] The Decision is unreasonable on three bases: 1) failure to consider relevant objective evidence and precedent, 2) failure to consider imputed risk, and 3) failure to consider the impact of the Applicant's failed refugee status on his return to Iran.

[18] First, the RAD reached its determination without considering relevant parts of the National Documentation Package [NDP] that are contrary to the Decision. The section of the NDP containing the US Department of State Human Rights Report explicitly identifies that risk of danger is not limited to family members of high-profile dissidents. The report notes that

punishment of family members for offences allegedly committed by an individual is a significant human rights issue in Iran. This section of the NDP provides evidence showing the Iranian government will intimidate and harass family members of people perceived to be in political disagreement with the Iranian state. The NDP also suggests Iranian authorities monitor their citizens' participation in protests in Canada and have threatened and intimidated people in Canada who are family members of the victims of Ukraine International Airlines Flight 752.

[19] The NDP indicates family members of Christian Iranians have been targeted by the Iranian state. Accordingly, the DR's status as a non-Muslim is sufficient to invoke the ire of Iranian authorities.

[20] The RAD also failed to consider the "Chairperson's Guideline 3: Child Refugee Claimants: Procedural and Evidentiary Issues" [Guideline 3], relevant jurisprudence, and international legal instruments (*Kim v Canada*, 2010 FC 149 [*Kim*] at paragraph 61). The objective evidence demonstrates that the Iranian regime engages in systematic repression of the freedom of expression of all its citizens, including children.

[21] The RAD erred by discounting evidence of persecution on the basis that the Applicant is a child without a demonstrated history of political activism. The RAD relied on the Applicant's inherent vulnerabilities, including his age and maturity, to undermine his political opinion and the objective basis of his risk.

[22] Moreover, the RAD's analysis of objective risk should have considered the entirety of the NDP, and Guideline 3. The analysis should have considered what circumstances would amount to persecution given the conditions in Iran, including living in a society that requires the Applicant to suppress his views.

[23] Second, the Board failed to consider whether the Applicant faces risk on the basis of DR's political opinion that will be imputed to him (*Alekozai v Canada (Citizenship and Immigration)*, 2015 FC 158 at para 16). The fact that the DR lost her job after being detained suggests the State is connected to her former employer and is thus aware of the existence of her son, the Applicant.

[24] Third, the Board failed to consider the fact that if returned to Iran, the Applicant would be doing so as a failed refugee claimant. The RAD's Research Directorate states Iranian authorities pay little attention to failed asylum seekers on return to Iran. However, the Applicant argues this does not guarantee Iranian authorities will not take punitive action against him as a failed refugee claimant.

[25] The RAD must consider all grounds of persecution, even if they are not raised by the claimant during the hearing (*Pastrana Viafara v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1526 at para 6).

B. *Respondent's Position*

[26] The Decision is reasonable. The Applicant argues the RAD erred in its evaluation of the evidence relating to objective risk to the Applicant's life and failed to consider the relevance of a nexus to a Convention ground.

[27] First, the RAD is not obligated to mention every document in evidence (*Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at para 79). The Applicant has the burden of establishing a link between the general documentary evidence and the applicant's specific circumstances (*Fodor v Canada (Citizenship and Immigration)*, 2020 FC 218 at para 30, citing *Balogh v Canada (Citizenship and Immigration)*, 2016 FC 426 at para 19). The RAD considered the arguments and evidence of the Applicant finding them insufficient to establish the Applicant would face persecution, given his lack of activism and young age. The DR was unable to "identify any specific fears for her son's safety, or any particular threats or risks that he himself would face in Iran, apart from separation from his mother".

[28] The DR's well-founded fear of persecution does not inherently equate to a corresponding risk of persecution for the Applicant (*Theodore v Canada (Citizenship and Immigration)*, 2021 FC 651 at para 8). For example, the Applicant's father resides in Iran, yet there is no evidence suggesting he has been harmed by the Iranian authorities due to the DR's violations. The RAD reasonably concluded, "the mere fact that his mother's claim is objectively well-founded does not mean that he has a well-founded fear of persecution in Iran."

[29] Second, it was reasonable for the RAD to conclude the DR's political opinion would not be imputed to Applicant upon his return to Iran, as an eleven-year-old boy.

[30] Third, the Applicant's argument, that the RAD did not consider the impact of his return to Iran as a failed refugee claimant, should not be entertained. The Applicant did not raise this as an issue before the RAD. This Court has held the RAD cannot be criticized for failing to consider arguments that were never presented to it (*Ogunjinmi v Canada (Citizenship and Immigration)*, 2021 FC 109 at paras 15-16).

C. Conclusion

[31] The Applicant has not satisfied his onus to establish that the Decision is unreasonable.

[32] The RAD found the RPD expressly considered risk facing the Applicant and agreed with their findings. The Decision (at para 31) states the Applicant's mother was unable to indicate any specific fear for her son's safety, or any particular threats or risks that he would face in Iran, apart from separation from his mother. When asked about the fears of her son and what would happen to him if returned to Iran, the mother stated, "[T]here is no specific threat that is [sic] – my son is facing".

[33] While it is true, decision-makers have a duty to be generally aware of country condition documents, the onus to provide evidence rests with the Applicant. The Officer does not have to research and provide evidence to support an Applicant's claim (*Montalvo v Canada (Citizenship and Immigration)*, 2018 FC 402 at para 16). I agree with the Respondent, with no risk or fear

clearly established the Board was not obligated to “comb through every document listed in the National Document Package” (*Jean-Baptiste v Canada (Citizenship and Immigration)*, 2018 FC 285 at para 19).

[34] The Applicant concedes the circumstances described in the documents are distinguishable from his case. I agree with the Applicant, the NDP document establishes Iranian authorities disapprove of those not in agreement with their mandate. However, none of this objective evidence directly ties to the Applicant, a minor child. The Iranian State’s monitoring of people in Canada who are family members of the victims of Ukraine International Airlines Flight 752 also does not relate to the Applicant.

[35] Regarding Guideline 3, it is true that consideration of potential persecution should be viewed from the perspective of a child’s vulnerabilities (*Kim* at para 61). However, for the reasons mentioned above, the Applicant has failed to demonstrate what makes him specifically vulnerable to the Iranian State. Accordingly, the RAD did not error in disregarding this document.

[36] Contrary to the Applicant’s assertion, it is not clear that the DR’s political views would be imputed to him. When asked whether there was a risk that Iranian authorities would decide the Applicant was not a Shia Muslim, the DR stated she did not know, nor did she know how they might find out. Therefore, it was reasonable for the RAD to find the Applicant would not be viewed as a political opponent or dissident. This finding was further reasonable in view of the

lack of risk to the Applicant's father who still resides in Iran. No evidence was presented showing that Iranian authorities have targeted him.

[37] Lastly, I agree with the Respondent, the Applicant's argument in regard to risk faced as a failed refugee claimant cannot be entertained. This issue was not raised with the RAD. Even if considered, this concern is speculative and directly contradicted by the Applicant's own submissions. As noted by the Applicant, the Research Directorate states Iranians who decided to return to Iran after seeking asylum abroad did not have any significant problems.

[38] I find the RAD reasonably assessed the objective basis of risk to the Applicant.

VI. Conclusion

[39] For the reasons above, the application for judicial review is dismissed.

[40] The parties do not propose a question for certification, and I agree that none arises.

JUDGMENT in IMM-11411-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

"Paul Favel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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